



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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## **PUBLIC HEARING DRAFT**

### **WASTE BAN ON COMMERCIAL ORGANIC MATERIAL**

#### **PROPOSED REGULATION AMENDMENTS**

**Proposed Amendments of the Waste Management Facility Regulations (310 CMR 19.000)**

**Proposed Revisions to the Waste Ban Guidance for Solid Waste Facilities**

**Proposed Guidance for Businesses, Institutions and Haulers**

**June, 2013**

Note: Although MassDEP is not required to seek public comment on guidance and the guidance is not part of the proposed amendments to 310 CMR 19.000, the department is making a draft guidance document available for review and comment, along with those proposed amendments, for the information and convenience of the public and regulated entities. The guidance will assist the public and regulated entities in understanding how Mass DEP intends to implement the proposed regulatory amendments. MassDEP will accept informal comments on the draft guidance until [INSERT DATE FOR END OF COMMENT PERIOD], 2013. Comments should be sent to [john.fischer@state.ma.us](mailto:john.fischer@state.ma.us).

## 1. Introduction

The 2010-2020 Massachusetts Solid Waste Master Plan sets ambitious goals of reducing the quantity of waste disposed of in the Commonwealth by 30% (2 million tons) by 2020, and by 80% (5.2 million tons) by 2050. To accomplish these goals, Massachusetts residents, municipalities, businesses and institutions will need to divert much more material from trash than they do today, and we will need to have infrastructure to collect this material from generators, process it, and move it to the businesses that will reuse it or recycle it into new products.

The Draft Plan proposes the adoption of a number of strategies for increasing residential, commercial and institutional recycling over the next ten years and beyond. A major proposed priority is to significantly increase the diversion of organic material from the solid waste stream, from the approximately 100,000 tons that are estimated to be diverted annually now to 450,000 tons by 2020, an increase of 350,000 tons/year. Organic materials, including food waste, compostable paper, and leaves and yard waste, represent more than 25% of municipal solid waste disposed in Massachusetts – approximately 1.3 million tons annually.<sup>1</sup> Of this amount, approximately 600,000 tons is disposed by businesses and institutions.<sup>2</sup> MassDEP believes that the Commonwealth could successfully divert one third of this commercial and institutional material (i.e., 200,000 tons) from disposal to other beneficial uses through a waste ban and supporting strategies, which would move us more than halfway to our 2020 goal.

This aggressive target is consistent with the 2010 Massachusetts Clean Energy and Climate Plan for 2020,<sup>3</sup> which sets a goal of reducing greenhouse gas emissions by 25% by 2020 and 80% by 2050. Achieving the goals of these Plans will produce important environmental and economic benefits. Increasing diversion of food waste from disposal will capture a valuable resource that can help improve soil quality, support gardening and agriculture, conserve water, reduce greenhouse gas emissions, and generate clean renewable energy. Capturing food waste will help support in-state collection, processing, composting, and digestion capacity that will also create jobs and economic development opportunities. This increased capacity also has the potential to provide synergistic benefits to farms and waste-water treatment plants.

In February 2011, the Executive Office of Energy and Environmental Affairs established a Task Force on Building Organics Capacity in Massachusetts to:

- Identify the barriers to advancing management of organic material in Massachusetts,

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<sup>1</sup> 2010 MSW disposal equals approximately 4,700,000 tons, of which 26.8% was organic materials, including compostable paper, approximately 1,260,000 tons.

<sup>2</sup> Based on 2008 data, the most recent year for which we have a residential/commercial breakout, commercial waste represented 54% of MSW disposal. Based on the 2010 waste characterization studies, organic materials, including compostable paper, represented 22.6% of commercial waste disposal.

<sup>3</sup> <http://www.mass.gov/eea/docs/eea/energy/2020-clean-energy-plan.pdf>

- Identify ways to reduce or eliminate these barriers, and
- Recommend specific actions to expand the infrastructure for composting, recycling, and organics management.

The Task Force discussions focused on four issues affecting the development of recycling and organics management facilities:

- Regulations adopted by the Massachusetts Department of Environmental Protection (MassDEP)<sup>4</sup>;
- Data and infrastructure needs, and developing markets for materials;
- Regulations and incentives adopted by the Massachusetts Department of Energy Resources (such as renewable energy credits and other financial incentives) that might encourage organics diversion; and
- Municipalities' needs for technical assistance and other support.

The Task Force discussions led to the formation of several workgroups, including a group focused on data and infrastructure needs, and developing markets for materials. MassDEP convened three meetings of this workgroup in spring 2011 to discuss Massachusetts strategies in these areas, including development of a waste ban.

These discussions have continued on a regular basis through MassDEP's Organics Subcommittee of the Solid Waste Advisory Committee. MassDEP worked with its Organics Subcommittee to prepare the [Organics Study and Action Plan](#) (Action Plan), which was published in February 2012 and revised in May 2012. MassDEP held a total of nine meetings of the Organics Subcommittee in 2012. MassDEP updated the Action Plan in January 2013, as we have made progress in implementing elements of the Action Plan.

The Action Plan lays out the programs and initiatives to be pursued over the next several years in order to achieve the Commonwealth's food waste diversion goals. This effort will take collaboration from a number of stakeholders including state and local government, institutions, the solid waste industry and private developers. The Action Plan identifies the barriers and recommended solutions to achieving the Commonwealth's organics diversion objective in four categories:

- Data Analysis,
- Collection Infrastructure,
- Processing Capacity and Market Development, and
- Regulatory Reform and Waste Ban Development.

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<sup>4</sup> MassDEP has addressed these recommendations through amendments to the Solid Waste Siting regulations at 310 CMR 16.00 promulgated in November 2012 by establishing clear permitting pathways for composting, conversion and anaerobic digestion operations utilizing organic material.

MassDEP met monthly for six months with the Organics Subcommittee to develop a framework proposal for a waste ban on commercial and institutional organic material, which was completed in September 2012. Waste bans, which restrict the disposal, transfer for disposal, and contracting for disposal of certain hazardous, recyclable, and compostable materials, have been in place in Massachusetts since 1990. Waste bans have been implemented as part of a comprehensive strategy to advance recycling, conserve limited disposal capacity, and support recycling markets, jobs and economic development in Massachusetts. Massachusetts existing waste bans have been a core part of our strategy to increase our overall recycling rate to 37% in 2010, making Massachusetts among the top states in the nation.

The waste ban on commercial organic material is intended to be implemented as part of this comprehensive Action Plan, which includes supporting strategies to work with businesses and institutions and haulers to establish organics diversion programs, as well as to build the collection, processing, composting, and anaerobic digestion infrastructure to support this added diversion. The proposed waste ban would help to drive and support investment and technology innovation in the Commonwealth by diverting food waste from disposal to anaerobic digestion and composting facilities. The framework proposal for the waste ban, which served as the basis for developing these proposed regulation amendments and revised guidance, is summarized below.

## **2. Summary of Proposed Amendments**

The proposed amendments would add “commercial organic material” to the list of materials banned from disposal in 310 CMR 19.017, effective July 1, 2014. As defined, this would include food material and vegetative material from entities (excluding residences) that dispose of one ton or more of that material per week. MassDEP has crafted the regulations to focus on these entities for several reasons:

- Based on our experience, a facility generating large amounts of food waste can typically divert food waste from disposal for the same or less cost than other materials currently disposed in their waste management system.
- Focusing on the largest food waste generators enables the collection and processing infrastructure to be developed most cost-effectively, and to make rapid progress towards our food waste diversion goal by focusing on a relatively small number of entities.
- MassDEP expects approximately 1,700 businesses and institutions to be subject to this waste ban. However, MassDEP expects the number of businesses and institutions that will have to make changes in response to these regulations will be lower.
- We estimate at least 1,000 of these entities are already diverting food waste from disposal in some way: through collection for composting or anaerobic digestion; on-site processing equipment, including a garbage disposal; collection for animal feed or

rendering; and/or food waste donation. For example, numerous grocery stores now divert their unsold food to donation or composting.

- Businesses potentially subject to the ban include supermarkets, colleges and universities, large secondary schools, large restaurants and hotels, food manufacturers and processors, and hospitals and nursing homes. The ban is tailored to address concerns from small businesses by exempting entities, such as most restaurants, convenience stores, small markets, and schools that dispose of less than one ton of organic material per week.

MassDEP will publish guidance to help businesses determine whether they will need to take steps to comply with the ban, and is proposing that the regulation become effective one year after final publication to allow lead time for compliance. To comply, businesses that are potentially subject to the ban will need to separate and divert food waste from the trash through any combination of reducing food waste at their business, donating servable food, installing an on-site system, or working with a hauler to send separated food waste to an anaerobic digestion facility or compost site. The waste ban would restrict the disposal, transfer for disposal, or contracting for this material to be disposed of as solid waste, but would not affect management via wastewater systems (i.e., garbage disposals).

MassDEP has conducted extensive outreach and stakeholder discussions on development of this ban, including more than 10 meetings of the Organics Subcommittee, many presentations to business and municipal interests, and outreach to many trade associations with members that will be affected by the ban. MassDEP will continue to assist businesses with compliance through by outreach and technical assistance before and after the ban takes effect. MassDEP provides assistance to businesses through the [RecyclingWorks in Massachusetts](#) program.

MassDEP has chosen not to include residential food waste or food waste from small commercial generators in the proposed ban, as insufficient collection and processing systems exist to handle this material cost effectively. In addition, food waste from larger sources will tend to be a higher quality feedstock for anaerobic digestion and composting facilities. MassDEP has proposed not to include biodegradable paper (e.g., paper towels, plates, biodegradable service ware) as part of the ban, as these materials would not be acceptable at all facilities. As the infrastructure and programs to support this food waste diversion become established, MassDEP intends to increase diversion of food waste from additional sources as appropriate. At that time, MassDEP will consider what the best strategies are to drive food waste diversion from these smaller generators, including potentially extending the waste ban to smaller sources.

This public hearing package is accompanied by a proposed revised waste ban guidance document for solid waste facilities that addresses the proposed addition of commercial organic material as a restricted material. The guidance also proposes several other changes to improve the implementation of waste bans at solid waste facilities. The waste ban guidance document is intended to assist solid waste facilities in complying with the waste ban regulations. In

particular, this document guides and informs the development of each facility's waste ban plan, which MassDEP reviews and approves as part of each facility's operating permit.<sup>5</sup> The proposed changes to the waste ban guidance are summarized at the beginning of that document.

### **Other related regulatory amendments in this proposal**

The proposed regulatory amendments also include changes to clarify MassDEP's authority to enforce all of the waste bans against haulers and generators. The proposed regulatory amendments indicate at 19.003, 19.013, and 19.017, that *waste bans* apply to any person disposing or contracting for the disposal or transfer of solid waste or restricted materials.

The proposed regulatory amendments at 19.017 also include changes to update MassDEP's permitting authority in M.G.L. c.111, s. 150A, which was revised by section 86 of chapter 68 of the Acts of 2011 to provide that the "permit may limit or prohibit the disposal of particular types of solid waste at a facility in order to protect the public health, *promote reuse, waste reduction and recycling*, extend the useful life of the facility, or reduce its environmental impact." (Italics added to indicate new statutory language).

### **3. Documents Included within the Public Hearing Package**

In addition to this background document, the public hearing package includes the following documents:

- Proposed Regulation Amendments to 310 CMR 19.000;
- Draft Revised Waste Ban Guidance Document for Solid Waste Facilities;
- Summary of Changes to the Waste Ban Guidance Document for Solid Waste Facilities; and
- Draft Question and Answer Document for Businesses, Institutions, and Haulers

M.G.L. Chapter 30A requires MassDEP to give public notice and provide an opportunity to review the proposed regulations at least 21 days prior to holding a public hearing. The hearing will be held in accordance with the procedures of M.G.L. Chapter 30A. The public hearing notice, proposed regulations and background document are available on MassDEP's website at:

[www.mass.gov/dep/public/publiche.htm](http://www.mass.gov/dep/public/publiche.htm).

Questions about this document and comments may be addressed to John Fischer at 617-292-5632, or [john.fischer@state.ma.us](mailto:john.fischer@state.ma.us).

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